United States v. Khan
Nos. 05-50468, 05-50472

RYMER, Circuit Judge, concurring.

I concur because I read our recent cases to dictate the result in this one. *United States v. Zavala*, 443 F.3d 1165, 1171 (9th Cir. 2006) (per curiam). However, left to my own devices, I would say that the Guidelines range correctly calculated by the district judge is the presumptively reasonable sentence. I am not persuaded that the sentence actually arrived at here, after consideration of the § 3553(a) factors, is also reasonable. The Khans' lack of criminal history is fully accounted for in the Guidelines analysis, and nothing remarkable appears about it. Indeed, if anything, it seems to me that while they had no *criminal* record, their *civil* record of liability for a different fraudulent scheme – the same sort of conduct for which they stand convicted in this case – points in the other direction. Neither does their age seem pertinent; at least to me, 53, their approximate age when committing the crimes, is not "advanced." Even though time passed before sentencing, being 60-something isn't particularly "advanced," either. While both unquestionably have health issues, nothing in the record reflects a medical concern about the effect of incarceration or even the need for housing at a medical facility. Further, on none of these scores is there any indication that the Khans are situated

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differently from others convicted of similar crimes. Finally, it seems to me that the extent of variance is extraordinary, yet without extraordinary (or much of any) cause. *Compare United States v. Menyweather*, 447 F.3d 625, 635-36 (9th Cir. 2006) (as amended). Accordingly, while I agree that the Guidelines were the appropriate starting point and that the district court could and should have considered § 3553(a) factors thereafter, I do not believe that the § 3553(a) factors as weighed by the district court vis-a-vis the Guidelines range produce a reasonable sentence.